

DEFENSE

Cooperation

**Memorandum of Understanding
Between the
UNITED STATES OF AMERICA
and CANADA**

Signed at Washington May 30, 2001

with

Annexes



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

CANADA

Defense: Cooperation

*Memorandum of understanding
Signed at Washington May 30, 2001;
Entered into force May 30, 2001.
With annexes.*

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

DEPARTMENT OF DEFENSE

OF THE UNITED STATES OF AMERICA

AND THE

DEPARTMENT OF NATIONAL DEFENCE OF CANADA

FOR

NORTH AMERICAN TECHNOLOGY AND INDUSTRIAL BASE ACTIVITIES

(Short Title: NATIBO)

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INTRODUCTION

The Department of Defense (DoD) of the United States of America and the Department of National Defence (DND) of Canada, hereinafter referred to as the "Participants":

Invoking the Agreement between the Government of the United States of America and the Government of Canada of 19 August 1994 Concerning Certain Mutual Defense Commitments to be applicable to this Memorandum of Understanding (MOU);

Recognizing that at the 1985 Shamrock Summit, Ronald Reagan, President of the United States and Brian Mulroney, Prime Minister of Canada, pledged to work to reduce barriers and to stimulate the two-way flow of defense goods and to establish a free exchange of technology knowledge and skill involved in defense production;

Recognizing the North American Technology and Industrial Base Organization (NATIBO) Charters of 1987, 1994 and 1997 which flowed from the Shamrock Summit pledge;

Having a common interest in defense and improving the defense posture of the North American technology and industrial base;

Recognizing the benefits to be obtained from interoperability and standardization of military equipment toward achieving Multinational Force Compatibility (MFC);

Desiring to improve their mutual conventional defense capabilities through the application of emerging technology;

Seeking to make the best use of their respective research and development capacities, eliminate unnecessary duplication of work and obtain the most efficient and cost-effective results; and

Recognizing the need to collectively develop emerging technologies to field technologically superior weapon systems;

Have reached the following understandings:

SECTION I

DEFINITIONS

The Participants have jointly decided upon the following definitions for terms used in this MOU:

Classified Information or Materiel	Official Information or materiel that requires protection in the interests of national security and is so designated by the application of a security classification marking.
Computer Data Base	A collection of data recorded in a form capable of being processed by a computer. This definition does not include computer software.
Computer Software	Computer programs, source code, source code listings, design details, algorithms, processes, flow charts, formulae, and related materials that would enable the software to be reproduced, recreated or recompiled. Computer Software does not include Computer Data Bases or Computer Software Documentation.
Computer Software Documentation	Owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the Computer Software or provide instructions for using the Computer Software.
Contract	Any mutually binding legal relationship which obligates a Contractor to furnish supplies or services, and obligates one or both of the Participants to pay for them.
Contracting Agency	The entity within the government organization of a Participant which has the authority to enter into, administer, and/or terminate Contracts.
Contracting Officer	A person representing a Contracting Agency of a Participant who has the authority to enter into, administer, and/or terminate Contracts.
Contractor	Any entity awarded a Contract by a Participant's Contracting Agency.

Contractor Project Background Information	Project Background Information generated, owned and delivered by a Contractor.
Contractor Project Foreground Information	Project Foreground Information generated, owned and delivered by a Contractor.
Contractor Support Personnel	Persons who supply administrative, managerial, scientific or technical support services to a Participant under a Contract with that Participant.
Controlled Unclassified Information	Unclassified Information to which access or distribution limitations have been applied in accordance with applicable national laws or regulations. Whether the Information is provided or generated under this MOU, the Information will be marked to identify its "in confidence" nature. It could include Information which has been declassified, but remains controlled.
Defense Purposes	Manufacture or other use in any part of the world by or for the armed forces of either Participant.
Demonstrator/ Prototype	An original model fabricated in small quantities to establish a baseline for design, producibility or materials.
Designated Security Authority (DSA)	The security office approved by national authorities to be responsible for the security aspects of this MOU.
Financial Costs	Any project costs that, due to their nature, will be paid using monetary contributions from the Participants.
Host Organization	The Department of Defense (DoD) or Department of National Defence (DND) organization of the Project Officer (PO) responsible for a given North American Technology Industrial Base (NATIB) Project Arrangement (PA).

Host Participant	The DoD or DND.
Information	Any Information, regardless of form or type, including but not limited to, that of a scientific, technical, business or financial nature, and also including photographs, reports, manuals, threat data, experimental data, test data, designs, specifications, processes, techniques, inventions, drawings, technical writings, sound recordings, pictorial representations and other graphical presentations, whether in magnetic tape, computer memory, or any other form and whether or not subject to copyright, Patent or other legal protection.
Jointly Generated Foreground Information	Information jointly generated by the Participants in the performance of a NATIB Activity.
Non-financial Costs	Any project costs that, due to their nature, will be met using non-monetary contributions from the Participants.
North American Technology and Industrial Base (NATIB)	NATIB represents the industrial and technological capability of the United States and Canada in support of peacetime and wartime operational requirements of the U.S. Department of Defense and the Canadian Department of National Defence.
NATIB Activity	Any activity in support of Information exchange, Working Groups and Project Arrangements, as detailed in the Scope of Work (SECTION III) under this MOU.
North American Technology and Industrial Base Organization (NATIBO)	Formally chartered in 1987 by the Participants, the NATIBO is committed to coordinating North American Technology and Industrial Base Activities.

NATIB Project Arrangement (PA)	An implementing arrangement, added after the NATIBO MOU has entered into effect, which specifically details the provisions of collaboration on a specific NATIB Activity.
NATIBO Secretariat	The entity composed of representatives selected by both Participants in support of the NATIBO MOU.
Parent Organization	The DoD and DND departments and agencies to which Cooperative Project Personnel belong.
Parent Participant	The DoD/DND to which the Parent Organization belongs.
Patent	Legal protection of the right to exclude others from making, using, or selling an Invention. The term refers to any and all Patents including, but not limited to, Patents of implementation, improvement, or addition, petty Patents, utility models, appearance design Patents, registered designs and inventor certificates or like statutory protection as well as divisions, reissues, continuations, renewals, and extensions of any of these.
Project Background Information	Information not generated in the performance of a particular NATIB Activity.
Project Equipment	Any material, equipment, end item, subsystem, component, special tooling or test equipment used in a NATIB Activity.
Project Foreground Information	Project Information generated in the performance of a particular NATIB Activity.
Project Information	Any Information provided to, generated in, or used in a NATIB Activity under this MOU regardless of form or type.

Project Invention	Any invention or discovery formulated or made (conceived or first actually reduced to practice) in the course of work performed under a NATIB Activity. The phrase "first actually reduced to practice" means the first demonstration, sufficient to establish to one skilled in the art to which the invention pertains, of the operability of an invention for its intended purpose and in its intended environment.
Technology Insertion	The matching of emerging technologies from federal laboratories, academia or the private sector with military and commercial applications by leveraging resources to achieve the same or better performance in systems.
Third Party	A government other than the governments of the Participants and any person or other entity whose government is not the government of a Participant.

SECTION II

OBJECTIVES

2.1 The objective of this MOU is to define and establish the general principles which will apply to the initiation, conduct, and management of NATIB Activities established between the Participants under this MOU.

2.2 The overall objective of each NATIB Activity will be to effectively leverage dollars and resources and reduce redundant efforts through bilateral cooperation on studies and projects relating to the defense technology and industrial base of the United States of America and Canada.

2.3 An additional objective is to achieve rapid Technology Insertion and commercialization of emerging technologies that can be used in the manufacture and repair of military weapon systems.

2.4 Detailed provisions of each individual project will be consistent with this MOU and be recorded in Project Arrangements (PAs) under this MOU.

SECTION III

SCOPE OF WORK

3.1 The scope of work for this MOU will include the following NATIB Activities:

3.1.1 Development, administration and execution of defense technology, industrial and logistics base projects, to include coordination of technology and industrial base activities.

3.1.2 Development, administration and execution of defense technology base projects, which may include development, testing and evaluation of demonstrators/prototypes.

3.1.3 Identification, testing and evaluation of any demonstrators/prototypes which may enhance NATIB.

3.1.4 Development, administration and execution of projects which integrate the defense and commercial industrial sectors and generate dual use products and technologies.

3.1.5 Development, administration and execution of defense technology, Technology Insertion and industrial base data projects.

3.1.6 Conduct of defense technology and industrial base studies and implementation of resulting technology and industrial base recommendations.

3.2 The following mechanisms will be utilized to undertake the NATIB Activities described in 3.1:

3.2.1 Information Exchange

3.2.1.1 Information exchange will take place on an equitable, balanced and reciprocal basis in all areas concerning NATIB. This includes all aspects of materiel research and development, policy, doctrine and operational requirements related to NATIB. This MOU permits the exchange of Computer Data Bases, Computer Software and Computer Software Documentation as Information. This MOU permits the exchange of Information for any purpose under the scope of this

MOU, including harmonizing the Participants' respective NATIB requirements and for formulating, developing, and negotiating any NATIB Activity. Information exchange need not necessarily coincide in time, technical field, nor in the form of Information.

3.2.1.2 Computer Data Bases, Computer Software or Computer Software Documentation associated with NATIB studies or projects may be transferred under this MOU in accordance with national procedures, subject to the following limitations:

3.2.1.2.1 Such transfers must be necessary or useful to the conduct of the study or project as determined by the providing Participant.

3.2.1.2.2 Such transfers may occur only where national authority for such release has been obtained by the providing Participant. Such release may be subject to restrictions on use placed by the providing Participant.

3.2.2 Working Groups (WGs)

3.2.2.1 Working Groups (WGs): WGs may be established to explore, study and report on specific technology or industrial base issues. A WG will be limited in scope to a single, well-defined study or project area and will endeavor to assess the technology or industrial base issue based on Information provided by both Participants in such a way as to arrive at a jointly determined position, within a set time limit. All WGs will have their own written Terms of Reference (TOR). Work performed by the previously established NATIBO working groups will, subject to national laws, be deemed to fall within the provisions of this MOU. These WGs will continue under the provisions of this MOU.

3.2.3 NATIB Project Arrangements (PAs)

3.2.3.1 Each PA will include specific provisions, consistent with this MOU, concerning the objectives, scope of work, sharing of work, management structure, financial arrangements (if required), contractual arrangements (if required), equipment and materiel transfers and disposal (if required), disclosure and

use of information and security classification for the applicable PA. PAs will conform to the format at Annex A. In the event of a conflict between the provisions of this MOU and any PA or other special provisions (if required), the MOU will take precedence.

3.3 Acquisition or production programs which may evolve from collaboration under one or more PAs to this MOU are outside the scope of this MOU and require conclusion of separate arrangements.

SECTION IV

MANAGEMENT (ORGANIZATION AND RESPONSIBILITIES)

4.1 Each Participant will appoint its national NATIBO MOU Steering Committee (SC) Co-Chair. Each Participant (through its MOU Co-Chair) will select members of the NATIBO MOU SC. Acting unanimously, the MOU Co-Chairs, their successors and/or their designated representatives will be responsible for:

- 4.1.1 implementing this NATIBO MOU and exercising executive level oversight;
- 4.1.2 monitoring overall use and effectiveness of the NATIBO MOU;
- 4.1.3 recommending amendments to this NATIBO MOU;
- 4.1.4 ensuring the provisions of this MOU are implemented;
- 4.1.5 approving projects to be undertaken under this MOU and approving WGs' formation, Terms of Reference (TOR), and their respective activities;
- 4.1.6 designating and providing oversight to the NATIBO Secretariat;
- 4.1.7 concluding appropriate PAs in accordance with this MOU and national policies and procedures;
- 4.1.8 establishing an appropriate management structure for each PA considering its scope and for any WG;
- 4.1.9 appointing a Project Officer (PO) for each PA;
- 4.1.10 approving the need for and assignment of Cooperative Project Personnel (CPP) in support of work to be performed under a NATIB PA;
- 4.1.11 providing administrative direction to POs;
- 4.1.12 evaluating the work conducted under each NATIB Activity and signifying approval or identifying corrective action to be taken;
- 4.1.13 approving budgetary or other financial proposals

related to the work under any NATIB PA;

4.1.14 resolving any issues identified or brought forth related to the work under any NATIB PA;

4.1.15 monitoring Third Party Sales and Transfers authorized in accordance with SECTION XIII (Third Party Sales and Transfers).

4.1.16 maintaining oversight of the security aspects of the PA, including reviewing and obtaining approval from the appropriate Designated Security Authority (DSA) of a Project Security Instruction and a Classification Guide prior to the transfer of Classified Information or Materiel or Controlled Unclassified Information.

4.2 The SC, minus the MOU Co-Chairs, is responsible for:

4.2.1 operating in an advisory capacity to the MOU Co-Chairs and WGs;

4.2.2 identifying sources of funding;

4.2.3 acting as a conduit for addressing recommendations from NATIB Activities to authorities within the respective Participant's organizations;

4.2.4 promoting the cooperative use of research, development and industrial base resources.

4.3 Each Working Group established under this MOU, whether standing or NATIB Activity-related, and within the provisions of the written TOR for the WG, will be responsible for:

4.3.1 addressing areas of concern and proposing courses of action to the MOU Co-Chairs;

4.3.2 monitoring overall implementation of NATIB Activities;

4.3.3 conducting progress reviews to assure projects are on schedule and successfully completed within the framework of this MOU;

4.3.4 preparing and presenting for approval the TOR, reports and reviews to the MOU Co-Chairs.

4.4 The NATIBO Secretariat is responsible for:

4.4.1 selected administrative functions in support of the NATIBO MOU;

4.4.2 preparing and presenting reports and reviews as directed;

4.4.3 liaising with appropriate points of contact as provided by each Participant;

4.4.4 maintaining a central repository of data/files on NATIB Activities and other NATIBO activities;

4.4.5 facilitating the coordination and staffing of NATIB PAs;

4.4.6 keeping an inventory of all Project Background Information and Project Foreground Information exchanged between the Participants under SECTION III, Paragraph 3.2 of this MOU, including that passed onto their Contractors and submitting an annual report thereof to the MOU Co-Chairs.

4.5 The responsibilities and duties of the POs will, in addition to those described in the PA, include, but not be restricted to the following:

4.5.1 effective implementation and efficient management of the assigned PA including technical, cost, and schedule performance including preparation of a Financial Management Policy and Procedures Document (FPPD), should it be required and/or requested by the MOU Co-Chairs;

4.5.2 preparing and presenting reports and reviews as directed by the MOU Co-Chairs;

4.5.3 preparing a Project Security Instruction and a Classification Guide when any NATIB PA contains provisions for the exchange of Classified Information.

4.5.4 mutually determining the tasks CPP will work under a defined NATIB PA and ensuring that required documentation is completed: 1) "Certificate of Conditions and Responsibilities for Cooperative Project Personnel (CPP)" (Annex B to the MOU); and 2) position description (PD), as required by the aforementioned Certificate.

4.6 Cooperative Project Personnel (CPP)

For any NATIB PA arising under this MOU, in accordance with national procedures of the Participants, the MOU Co-Chairs may mutually approve the assignment of CPP to work under the PA. Office space and administrative support, in accordance with the Host Participant's normal practices, will be provided for Participants' representatives. Provisions for the personnel provided are described in SECTION V, Cooperative Project Personnel (CPP).

4.7 The MOU Co-Chairs, SC, WGs and POs will meet as required.

SECTION V

COOPERATIVE PROJECT PERSONNEL (CPP)

5.1 The Participants may assign military or civilian employees of their DoD/DND to serve as CPP in support of a NATIB PA under this MOU in accordance with the provisions of this Section. The commencement and terms of reference of such an assignment are to be mutually acceptable to the Participants and established in the relevant NATIB PA prior to appointment. An individual may serve for any length of time up to the completion or termination of the NATIB PA. Changes or additions of CPP may be made upon recommendation by POs and with the approval of MOU Co-Chairs without a formal NATIB PA amendment.

5.2 CPP will not act in a liaison capacity. The MOU Co-Chairs will approve the assignment of CPP. CPP will perform duties as mutually determined by the POs, within the scope of this MOU and under any subsequently established PAs under this MOU.

5.3 The NATO Status of Forces Agreement pertaining to rights and privileges of military and civilian personnel while in the country of the Host Participant will apply to CPP and their dependents.

5.4 The Parent Participant's responsibility will include all costs and expenses of CPP, including, but not limited to:

5.4.1 All pay and allowances.

5.4.2 Travel to and from the country of the Host Participant, except for travel pursuant to paragraph 5.5.

5.4.3 All temporary duty costs, including travel costs, when such duty is carried out at the request of the Parent Participant.

5.4.4 Compensation for loss of, or damage to, the personal property of CPP and their personal dependents.

5.4.5 The movement of dependents and the household effects of CPP.

5.4.6 Preparation and shipment of remains and funeral expenses in the event of the death of CPP or their dependents.

5.4.7 All expenses in connection with the return of CPP whose assignment has been terminated, along with his or her dependents.

5.5 The Host Participant will be responsible for the following:

5.5.1 Travel and subsistence costs in connection with the performance of any duty carried out pursuant to a requirement of the Host Participant.

5.5.2 Costs incurred as a result of a change in location of work ordered by the Host Participant during the period of exchange.

5.6 The Host Participant will provide facilities and equipment necessary for the performance of tasks assigned to CPP. The use of Host Participant facilities and equipment by CPP will be a shared cost between the Participants, as determined in the relevant NATIB PA.

5.7 Unless otherwise provided by relevant bilateral arrangements, the Host Participant will not provide any supplies or services related to those costs that, pursuant to paragraph 5.4, are the responsibility of the Parent Participant. Accordingly, the Parent Participant will make arrangements to defray such costs directly through its personnel, rather than through reimbursement to the Host Participant.

5.8 The Participants will establish the maximum level of security clearance required, if any, to permit CPP to have access to Classified Information and work areas in accordance with the Project Security Instruction and Classification Guide. Access to Classified Information and facilities will be on a need-to-know basis and limited to the minimum required to accomplish NATIB PA work assignments.

5.9 Each Participant will cause security assurances to be filed, through the Canadian Embassy in Washington, D.C., in the case of Canadian personnel, and through the U.S. Embassy in Canada in the case of U.S. personnel, stating the security clearances for the CPP being assigned. The security assurances will be prepared and forwarded through prescribed channels in compliance with established Host Participant procedures.

5.10 The Host Organization and the Parent Organization will ensure that assigned CPP are fully cognizant of applicable laws

and regulations concerning the protection of proprietary Information (such as Patents, copyrights, know-how, and trade secrets), Classified Information and Controlled Unclassified Information to which access might be gained under this NATIB PA both during and after termination of an assignment. Prior to taking up assigned duties, CPP will be required to sign the certification at Annex B to this MOU.

5.11 CPP will at all times be required to comply with the security laws, regulations and procedures of the government of the Host Participant. Any violation of security procedures by CPP during their assignment will be reported to the Parent Participant for appropriate action. CPP committing willful violations of security laws, regulations, or procedures during their assignments will be withdrawn from the NATIB PA, with a view toward appropriate administrative or disciplinary action by the Parent Participant.

5.12 All Classified Information made available to the CPP will be considered as Classified Information furnished to the Parent Participant and will be subject to all provisions and safeguards provided for in SECTION XII (Security), the Project Security Instruction, and the Classification Guide.

5.12.1 CPP will not take custody of Classified Information or Controlled Unclassified Information in tangible form (for example, documents or electronic files) unless authorized by the POs of both the Parent and Host Participants on a case-by-case basis.

5.13 To the extent authorized by the laws and regulations of the government of the Host Participant, the Host Organization will provide such administrative support as is necessary for CPP to perform their assigned tasks.

5.14 Consistent with the laws and regulations of the government of the Host Participant, CPP assigned under this MOU will be subject to the same restrictions, provisions, and privileges as Host Participant personnel of comparable rank and in comparable assignments. Further, to the extent authorized by the laws and regulations of the government of the Host Participant and applicable bilateral or multilateral arrangements, CPP and their authorized dependents will be accorded on a reciprocal basis:

5.14.1 Exemption from any tax by the government of the Host Participant upon income received from the government of the Parent Participant.

5.14.2 Exemption from any customs and import duties or similar charges levied on items entering the country of the Host Participant for their official or personal use including their baggage, household effects, and private motor vehicles. The foregoing will not in any way limit privileges set forth elsewhere in this MOU, or other privileges granted by the laws and regulations of the government of the Host Participant.

5.15 CPP and their dependents will be informed by the Host Organization about applicable laws, orders, regulations, and customs and the need to comply with them. CPP and their dependents also will be briefed by Host Organization personnel regarding their specific entitlements, privileges, and responsibilities upon their arrival in the country of the Host Organization.

5.16 CPP may observe the holiday schedule of either the Parent Participant or the Host Participant, as mutually acceptable.

5.17 The Participants will determine working hours for CPP that are consistent with the customs and requirements of both Participants. CPP will have performance evaluations rendered in accordance with the applicable Parent Participant regulations.

5.18 CPP committing an offense under the laws of the government of either the Parent Participant or the Host Participant may be withdrawn from the NATIB PA with a view toward further administrative or disciplinary action by the Parent Participant. Disciplinary action, however, will not be taken by the Host Participant against CPP and CPP will not exercise disciplinary powers over personnel of the Host Participant. The Participants will cooperate when legally possible in carrying out administrative or disciplinary action by the Parent Participant against its CPP.

5.19 Any medical and dental care that may be provided to CPP and their dependents at the Host Participant medical facilities will be subject to the requirements of the laws and regulations of the government of the Host Participant or existing bilateral arrangements between the Participants, including reimbursement when required by such laws and regulations or bilateral arrangements between the Participants.

5.20 In no case will CPP be assigned to positions which would require exercise of command or be assigned to other positions

that would require them to exercise responsibilities that are reserved by law or regulation to an officer or employee of the Host Participant.

5.21 CPP will not be placed on duty or in positions in areas of political sensitivity where their presence would jeopardize the interests of the Parent Participant, or where, in the normal course of their duty, they may become involved in activities which may embarrass the Parent Participant.

5.22 The Host Participant will not deploy CPP in non-direct hostility situations, such as UN peacekeeping or multinational operations, without Parent Participant approval. Additionally, CPP will not be deployed to a third country without Parent Participant approval.

5.23 The Host Participant will not place CPP in duty assignments in which direct hostilities with forces of third states are likely. Should a unit in which CPP are assigned become involved in hostilities unexpectedly, CPP assigned to the unit will not be involved in the hostilities without authorization from the Parent Participant. CPP approved by both the Parent Participant and the Host Participant for involvement in hostilities will be given clear guidance on the Host Participant's interpretation of laws of war, to include the rules of engagement.

5.24 Purchasing and patronage privileges at military commissaries, exchanges, theaters and clubs will be extended to CPP and their dependents on the same basis as equivalent personnel of the Host Participant. This provision will not, however, limit privileges set forth elsewhere in this MOU or other privileges granted by the Host Participant, at its discretion, with the consent of the Parent Participant.

5.25 CPP will be granted leave according to their entitlements under the regulations of the Parent Organization, subject to the approval of the appropriate authorities of the Host Organization.

5.26 CPP will be required to comply with the dress regulations of the Parent Organization and will also wear such identification as may be necessary to identify the CPP's nationality, rank and status. The order of dress for any occasion will be that which most nearly conforms to the order for the Host Organization with which they are serving. Customs

of the Host Organization will be observed with respect to wearing of civilian clothes.

5.27 Consistent with the laws and regulations of the government of the Host Participant, and upon provisions of reciprocity, the Host Organization will provide, if available, housing and messing facilities for CPP and their dependents on the same basis and priority as for its own personnel. CPP will pay messing and housing charges to the same extent as personnel of the Host Organization. At locations where facilities are not provided by the Host Organization for its own personnel, the Parent Organization will make suitable arrangements for CPP.

5.28 CPP and those dependents accompanying them, must obtain motor vehicle liability insurance coverage in accordance with applicable laws and regulations of the government of the Host Participant, or its political subdivision, where they are located. In case of claims involving the use of private motor vehicles, the first recourse will be against such insurance.

SECTION VI

FINANCIAL ARRANGEMENTS

6.1 Each Participant will bear its equitable share of the full Financial and Non-financial costs incurred in performing, managing, and administering its responsibilities and activities under this MOU and each NATIB PA, including overhead costs, administrative costs, and costs of claims, and each Participant will receive an equitable share of the results. The tasks to be performed by each Participant will be established in each NATIB PA. The assignment of tasks will represent an equitable sharing of the costs and work to be performed under NATIB PAs.

6.2 The following costs will be borne entirely by the Participant incurring the costs or on whose behalf the costs are incurred:

6.2.1 Costs associated with any unique national requirements identified by a Participant under a PA.

6.2.2 Any other costs outside the scope of this MOU and its PAs.

6.3 The financial responsibilities of the Participants will be subject to the availability of appropriated funds for such purposes. A Participant will promptly notify the other Participant if available funds are not adequate to fulfill its financial obligations under this MOU or a NATIB PA. If a Participant notifies the other Participant of its intention to terminate or reduce its funding for a NATIB PA, both Participants will immediately consult with a view toward continuation on a modified or reduced basis. In the event that the Participants conclude, following consultation, that it is not practicable to continue work under a NATIB PA, the provisions of SECTION XVII will apply and the NATIB PA will be terminated in accordance with that Section.

6.4 This MOU creates no financial or non-financial responsibilities regarding individual NATIB PAs. Detailed descriptions of the financial arrangements for a specific NATIB PA, including the total estimated cost of the PA and each Participant's share of the total estimated costs, will be contained in the NATIB PA. Each Participant will contribute its equitable share of the total estimated cost of each NATIB PA and will receive an equitable share of the results, in accordance

with the provisions of this MOU and the applicable NATIB PA. The Participants may contribute their equitable shares of the full costs of such NATIB PAs in funds, defense articles, defense services, or in Project Background Information needed for such NATIB PAs.

6.5 For NATIB PAs where one Participant contracts on behalf of both Participants, the POs will be responsible for establishing the detailed financial management procedures under which a PA will operate, if they deem appropriate. These procedures, which must accord with the national accounting and audit requirements of the Participants, will be detailed in an FPPD proposed by the POs and subject to the approval of the MOU Co-Chairs, as appropriate.

6.6 The Participants recognize that it may become necessary for one Participant to incur contractual or other obligations for the benefit of the other Participant prior to receipt of the other Participant's funds. In the event that one Participant incurs such obligations, the other Participant will make such funds available in such amounts and at such times as may be required by the Contract or other obligation and to pay any damages and costs that may accrue from the performance of or cancellation of the Contract or other obligation in advance of the time such payments, damages, or costs are due.

SECTION VII

CONTRACTUAL ARRANGEMENTS

7.1 When one Participant individually contracts to undertake a task under this MOU, it will be solely responsible for its own contracting, and the other Participant will not be subject to any liability arising from such Contracts without its written consent.

7.2 If the Participants determine that Contracting is necessary to fulfill their obligations under a NATIB PA of this MOU, one Participant may contract for both Participants in accordance with its respective national laws, regulations and procedures. Such contractual arrangements will be detailed in that particular NATIB PA.

7.3 For all contracting activities performed by either Participant, the POs will, upon request, provide to the Participants, for information purposes, a copy of all Statements of Work prior to the issuance of solicitations.

7.4 Each Participant's Contracting Agency will negotiate to obtain the rights to use and disclose Project Information required by SECTION IX (Disclosure and Use of Project Information). Each Participant's Contracting Agency will insert into its prospective contracts (and require its subcontractors to insert in subcontracts) suitable provisions to satisfy the requirements of this NATIBO MOU, including SECTION VIII (Project Materials, Supplies, and Equipment), SECTION IX (Disclosure and Use of Project Information), SECTION X (Controlled Unclassified Information), SECTION XII (Security) and SECTION XIII (Third Party Sales and Transfers) of this MOU. Early in the contracting process, each Participant's Contracting Officer will advise prospective Contractors of their obligation to notify the Contracting Agency immediately if they are subject to any license, agreement, or arrangement that will restrict that Participant's freedom to disclose information or permit its use. The Contracting Officer will also advise prospective Contractors to employ their best efforts not to enter into any new agreement or arrangement that will result in restrictions.

7.5 In the event a Participant's Contracting Agency is unable to secure adequate rights to use and disclose Project Information as required by SECTION IX (Disclosure and Use of Project Information), or is notified by contractors or potential

contractors of any restrictions on the disclosure and use of information, the PO will refer the matter to the MOU Co-Chairs for resolution.

7.6 The POs will promptly advise the MOU Co-Chairs of any schedule delay or other performance problems of any Contractor.

SECTION VIII

PROJECT MATERIALS, SUPPLIES, AND EQUIPMENT

8.1 For the purpose of carrying out a NATIB PA, each Participant may loan without charge to the other Participant such materials, supplies, and equipment identified in a NATIB PA as being necessary for the corresponding project. While such loans will be based on the principle of reciprocity, exact item for item exchanges are not required.

8.2 Materials, supplies, and equipment loaned will be used by the receiving Participant only for the purposes set out in this NATIBO MOU and applicable PAs. In addition, the receiving Participant will maintain materials, supplies, and equipment in good order, repair, and operable condition and return the items in operable condition and in as good condition as received, normal wear and tear excepted. If the materials, supplies and equipment are lost or damaged beyond economical repair, the receiving Participant will pay the replacement value as computed pursuant to the providing Participant's national laws, regulations and procedures. If the providing Participant consents, the loaned materials, supplies or equipment may be expended or otherwise consumed in connection with the project without reimbursement to the providing Participant.

8.3 Each NATIB PA will provide specific details of any loan of materials, supplies or equipment. Such material, supplies or equipment identified at the time of PA signature will be detailed in the PA as set out in Annex A. Material, supplies or equipment which cannot be identified at the time of PA signature will be documented, when identified, in a list to be developed and maintained by the POs in the format at Annex A. Approval for all loans will be in accordance with national procedures.

8.4 Materials, supplies, and equipment loaned under a NATIB PA will remain the property of the providing Participant and will be returned as set out in the NATIB PA. However, it is recognized that the success of a project may require the expenditure or consumption of loaned materials, supplies, or equipment. In such cases, the NATIB PA will state that the materials, supplies or equipment are to be expended or consumed and not returned to the providing Participant.

8.5 Subject to paragraph 8.2 above, the Participants will not

assert a claim against the other for injury, loss, or damage to themselves, their property, or third parties resulting from the use of the materials, supplies, or equipment loaned by the other Participant.

8.6 The Participants will make every effort to ensure that the materials, supplies, and equipment are furnished in a serviceable and usable condition according to their intended purpose. However, the Participants make no warranty or guarantee of fitness of the equipment for a particular purpose or use, and make no commitment to alter, improve, or adapt the material, supplies, and equipment or any part thereof.

8.7 Project Equipment provided under a PA by either Participant will remain the property of the providing Participant.

8.8 Any Project Equipment which is jointly acquired on behalf of both Participants for use under this MOU will be disposed of during the project or when the project ceases, as determined by the MOU Co-Chairs.

8.9 Disposal of jointly acquired equipment may include a transfer of the interest of one Participant in such Project Equipment to the other Participant, or the sale of such equipment to a Third Party in accordance with SECTION XIII (Third Party Sales and Transfers) of this MOU. The Participants will share the consideration from jointly acquired Project Equipment transferred or sold to a Third Party in the same ratio as costs are shared under the NATIB PA in which it was acquired.

SECTION IX

DISCLOSURE AND USE OF PROJECT INFORMATION

9.1 General

Both Participants recognize that successful collaboration depends on full and prompt exchange of Information necessary for carrying out each NATIB Activity. The Participants intend to acquire sufficient Project Information and rights to use such Information to promote the objectives of the NATIB. The nature and amount of Project Information to be acquired will be in accordance with SECTION II (Objectives), SECTION III (Scope of Work), SECTION VII (Contractual Arrangements) and the PAs to this MOU. Subject to the rights both Participants are accorded under this MOU, title to Project Foreground Information generated by a Participant or its contractor will reside within that Participant and/or its contractors, in accordance with that Participant's national laws, regulations and policies.

9.2 All Information relating to NATIBO and provided by one Participant to the other Participant prior to entry into effect of the MOU will be treated as Information exchanged under paragraph 3.2 of this MOU.

Information Exchange

9.3 The disclosure and use provisions which govern exchange of Information authorized in SECTION III (Scope of Work), paragraph 3.2.1 is as follows:

9.3.1 Disclosure: At its discretion, the furnishing Participant may disclose Information to the other Participant. Prior written permission from the furnishing Participant will be required for further disclosure of the Information by the receiving Participant to any other entity, for example, a Contractor. Such permission will not be required in the case of further disclosure to the receiving Participant's Contractor Support Personnel, who are under a legally binding non-disclosure agreement.

9.3.2 Use: Use of Information will be for information and evaluation purposes only. Written permission from the furnishing Participant will be required for any other use.

Other NATIB Activities

9.4 The disclosure and use provisions which govern other NATIB activities authorized in SECTION III (Scope of Work), paragraphs 3.2.2 and 3.2.3 are set out below.

9.5 Government Project Foreground Information

9.5.1 Disclosure: Project Foreground Information generated by a Participant's military or civilian employees will be disclosed without charge to both Participants.

9.5.2 Use: Each Participant may further disclose, use or have used on its behalf Government Project Foreground Information without charge only for its Defense Purposes. The Participant providing Government Project Foreground Information will also retain its rights therein. If a Participant intends to use any Government Project Foreground Information in a sale or other transfer to a Third Party, however, the provisions of SECTION XIII (Third Party Sales and Transfers) of this MOU will apply.

9.6 Contractor Project Foreground Information

9.6.1 Disclosure: Contractor Project Foreground Information generated and delivered by Contractors will be disclosed without charge to the Participants.

9.6.2 Use: Each Participant may further disclose, use or have used on its behalf, without charge, only for its Defense Purposes; all Contractor Project Foreground Information. The Participant whose Contractors generate and deliver Contractor Project Foreground Information will also retain rights of use therein in accordance with the applicable Contract(s). If a Participant intends to use any Contractor Project Foreground Information in a sale or other transfer to a Third Party, the provisions of SECTION XIII (Third Party Sales and Transfers) of this MOU will also apply.

9.7 Government Project Background Information

9.7.1 Disclosure: Each Participant, upon request, will disclose to the other Participant any relevant Government Project Background Information generated by its military or civilian employees, provided that:

9.7.1.1 such Government Project Background Information is necessary to or useful in the NATIB Activity, with the disclosing Participant determining whether it is "necessary to" or "useful in" the NATIB Activity;

9.7.1.2 such Government Project Background Information may be made available without incurring liability to holders of proprietary rights;

9.7.1.3 disclosure is consistent with national disclosure policies and regulations of the disclosing Participant.

9.7.2 Use: Government Project Background Information disclosed by one Participant to the other Participant may be used without charge, subject to the equitability requirements of Section VI (Financial Arrangements), paragraph 6.4, by or for the receiving Participant for conducting the NATIB Activity for which it was provided only. However, subject to proprietary rights held by other than the Participants, Government Project Background Information may be used for Defense Purposes by the receiving Participant without charge when the use of such Government Project Background Information is necessary for the use of Government Project Foreground Information. The furnishing Participant (after consultation with the Receiving Participant) will determine whether the use of such Government Project Background Information is necessary. The disclosing Participant will retain all its rights with respect to such Government Project Background Information.

9.8 Contractor Project Background Information

9.8.1 Disclosure: Any relevant Contractor Project Background Information (including Information subject to proprietary rights) which is or has been generated outside of the NATIB Activity delivered by Contractors of one of the Participants will be made available to the other Participant providing the following provisions are met:

9.8.1.1 such Contractor Project Background Information is necessary to or useful in the NATIB Activity, with the disclosing Participant determining whether it is "necessary to" or "useful in" the NATIB

Activity;

9.8.1.2 such Contractor Project Background Information may be made available without incurring liability to holders of proprietary rights;

9.8.1.3 disclosure is consistent with national disclosure policies and regulations of the disclosing Participant.

9.8.2 Use: Contractor Project Background Information disclosed by one Participant may be used without charge by or for the other Participant to conduct the NATIB Activity for which it was provided only. Any other use will be in accordance with the terms arranged with the Contractor, and may be the subject of further restrictions by holders of proprietary rights.

9.9 Jointly Generated Foreground Information

9.9.1 Disclosure: All Jointly Generated Foreground Information generated under a NATIB Activity will be disclosed to both Participants promptly and without charge.

9.9.2 Use: Each Participant generating or receiving Jointly Generated Foreground Information may use or have used such Information without charge only for its Defense Purposes unless mutually decided otherwise in writing.

9.9.3 Information resulting from WGs will be treated as Jointly Generated Foreground Information unless otherwise decided.

9.10 Project Information Subject to Proprietary Rights

9.10.1 All unclassified Project Information subject to proprietary rights will be identified, marked and handled as Controlled Unclassified Information. All classified Project Information subject to proprietary rights will be so identified and marked.

9.10.2 The provisions of the NATO Agreement on the communication of Technical Information for Defence Purposes of 19 October 1970, and its Implementing Procedures of 1 January 1971, will apply to this MOU.

Project Inventions and Patents

9.11 Reporting of Project Inventions. A Participant will disclose to the other Participant any Project Invention made by its respective employees or Contractors as promptly as possible after the Project Invention is made. The disclosure will be in the form of a written report listing the inventor(s) and describing the manner and process of making and using the Project Invention in sufficient technical detail as to enable any person skilled in the art to which it pertains to make and use the Project Invention.

9.12 Title of Project Inventions. Each Participant will retain title to each Project Invention made by its respective employees.

9.12.1 The Participant retaining title to such Project Inventions will grant to the other Participant at least a royalty-free, nonexclusive, irrevocable license to practice or have practiced world-wide for Defense Purposes by or on behalf of the other Participant such Project Inventions covered by any resulting Patents.

9.12.2 The Participant retaining title to such Project Inventions may, in its discretion, grant rights in such Project Inventions covered by any resulting Patents to the other Participant, or any other person or entity, upon such terms and conditions as it deems appropriate.

9.13 Title to Joint Project Inventions. Title to Project Inventions made jointly by employees of the Participants will be held jointly by the Participants unless otherwise determined.

9.13.1 The Participants may grant rights in such joint Project Inventions to any other person or entity, upon such terms and conditions as they unanimously deem appropriate.

9.14 Contractor Generated Project Inventions. Title to Project Inventions made by Contractors will be held in accordance with the terms of the respective Contract. Where any Contract fails to specify how title in any Patent will be held, title will be determined in accordance with the national laws governing Project Inventions by Contractors of the Participant who awarded the Contract.

9.14.1 Contractor Generated Project Inventions in Unique National Variants. Where Project Inventions are made in

connection with a unique national variant, paid for fully by or on behalf of only one Participant, regardless of who is the Contracting Agency, the Contracting Agency must ensure that the Contract grants to the Participant funding the national variant any rights as directed by that Participant.

9.14.2 Contractor Generated Project Inventions of Participants. Where a Contract is awarded by a Participant on its own behalf or by a Contracting Agency on behalf of one or both of the Participants, the Contract so awarded must ensure that the owner of any Project Invention made by a Contractor will grant to the Participant(s) at least a royalty-free, nonexclusive, irrevocable license to practice or have practiced worldwide for Defense Purposes by or on behalf of the Participant(s) the Project Invention covered by any resulting Patents.

9.15 Patent Applications. A Participant having the right to hold title to a Project Invention may elect to file Patent applications or otherwise seek Patent protection thereon provided it so advises the other Participant of its intention to do so and the countries in which it intends to seek Patent protection within 60 days from the date it reports the Project Invention to the other Participant.

9.15.1 If a Participant initially elects to seek Patent protection, but later decides not to continue seeking Patent protection, or if a Participant decides not to share the costs of seeking Patent protection of a joint Project Invention, then the other Participant may elect (but is not required) to seek Patent protection on such a Project Invention in those countries in which the Participant has not elected to seek Patent protection.

9.15.2 If the other Participant elects to seek Patent protection in those countries, the Participant initially having the right to seek Patent protection on the Project Invention agrees to consent to such filing by the other Participant and the other Participant will equitably share any royalties from the licensing of any resulting Patents taking into consideration the expenses incurred by each Participant in securing Patent protection.

9.15.3 A Participant will not file or cause to be filed any Patent application outside the United States of America or Canada, or publish or cause to be published any such

application or Patent thereon anywhere, without the other Participant's prior written consent where the application contains either:

9.15.3.1 the other Participant's Project Background Information, or

9.15.3.2 Jointly Generated Foreground Information.

9.15.4 Patent applications on Project Inventions which contain Classified Information or Materiel will be protected and safeguarded in accordance with the requirements contained in the NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defense and for its Applications for Patents have been Made, signed on 21 September 1960, and its Implementing Procedures.

9.16 Patent Prosecution

9.16.1 The expenses attendant to seeking Patent protection as specified above will be borne by the Participant seeking Patent protection. Where both Participants jointly seek Patent protection, the expenses attendant to seeking the Patent protection will be shared equally between the Participants, unless mutually deemed otherwise.

9.16.2 Each Participant will provide the other with copies of Patent applications it files in Patent offices, along with a power to inspect and make copies of all documents retained in the files of the applicable Patent office that are available for inspection and copying by a Participant seeking Patent protection.

9.16.3 A Participant seeking Patent protection will have the right to control the Patent prosecution where it is solely funding the expenses attendant to seeking the Patent protection. Where both Participants are seeking Patent protection, they will jointly control the Patent prosecution if each is funding a portion of the expenses attendant to seeking the Patent protection. Both Participants will cooperate with each other in seeking Patent protection.

9.17 Maintenance Fees. The fees payable to a Patent office in order to maintain the Patent on a Project Invention will be paid by the Participant having title to the Patent or will be shared equally if title is held jointly by both Participants. If a

Participant decides not to pay the required maintenance fees, it will immediately notify the other Participant, who may pay the maintenance fees if it desires to maintain the enforcement of the Patent. In this case, the Participant who has decided not to pay the maintenance fees will assign its rights to the other Participant.

9.18 Each Participant will notify the other of any Patent infringement claim and, insofar as possible, each Participant will extend to the other Participant any assistance in defending such claims arising in the course of work performed under the NATIB PA. The Participants will, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under the NATIB PA of any invention covered by a Patent issued by their respective countries. Each Participant is responsible for handling all Patent infringement claims made in its territory and to inform the other Participant of such claims and to consult with the other Participant during the handling and prior to any settlement of such claims.

SECTION X

CONTROLLED UNCLASSIFIED INFORMATION

10.1 Except as otherwise provided in this MOU or authorized in writing by the originating Participant, Controlled Unclassified Information provided or generated by one Participant to another under this MOU will be subject to the following disclosure and use restrictions:

10.1.1 Such information will be used only for the purposes authorized for use of Project Information as specified in SECTION IX (Disclosure and Use of Project Information).

10.1.2 Access to such information will be limited to personnel whose access is necessary for the permitted use under subparagraph (10.1.1.) above, and subject to the provisions of SECTION XIII (Third Party Sales and Transfers).

10.1.3 Each Participant will take all lawful steps, which may include national classification, available to it to keep such Controlled Unclassified Information free from further disclosure (including requests under any legislative provisions); except as provided in subparagraph (10.1.2) above, unless the originating Participant consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that such information may have to be disclosed to a Third Party or a judicial body under any legislative provision, immediate notification will be given to the originating Participant.

10.2 To assist in providing the appropriate controls, the Participants will mark Controlled Unclassified Information provided to the other Participant with a legend indicating the country of origin, the conditions of release and the fact that it relates to this MOU and that it is supplied "In Confidence" or an equivalent marking.

10.3 Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Participants will incorporate into their Contracts provisions requiring their Contractors to control such information in accordance with the provisions of this Section.

SECTION XI

VISITS TO ESTABLISHMENTS

11.1 Each Participant will permit visits to its Government establishments, agencies and laboratories, and Contractor facilities by employees of the other Participant or by employees of the other Participant's Contractor(s), provided that the visit is authorized by both Participants and the employees have appropriate security clearances and a need-to-know.

11.2 All visiting personnel will be required to comply with security regulations of the Host Participant. Any information disclosed or made available to visitors will be treated as if supplied to the Participant sponsoring the visiting personnel, and will be subject to the provisions of this MOU.

11.3 Requests for visits by personnel of one Participant to a facility of the other Participant will be coordinated through official channels, and will conform with the established visit procedures of the host country. Requests for visits will bear the name of the NATIB Activity.

11.4 Lists of personnel of each Participant required to visit, on a continuing basis, facilities of the other Participant will be submitted through official channels in accordance with recurring international visit procedures.

SECTION XII

SECURITY

12.1 All Classified Information or Materiel or classified Project Equipment provided or generated pursuant to this MOU will be stored, handled, transmitted and safeguarded in accordance with the General Security Agreement between Canada and the United States of America, of 30 January 1962, and including the Industrial Security Annex thereto, of 8 February 1985.

12.2 Classified Information or Materiel or classified Project Equipment will be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSAs) of both Participants. Classified Information or Materiel and classified Project Equipment will bear the level of classification, denote the country of origin, the conditions of release, and the fact that the information relates to this MOU or one of its PAs.

12.3 Each Participant will take all lawful steps available to ensure that Classified Information or Materiel provided or generated pursuant to this MOU is protected from further disclosure, except as permitted by para 12.8, unless the other Participant consents to such disclosure. Accordingly, each Participant will ensure that:

12.3.1 The recipient will not release the Classified Information or Materiel to any government, national, organization, or other entity of a Third Party without the prior written consent of the originating Participant in accordance with the procedures set forth in SECTION XIII (Third Party Sales and Transfers).

12.3.2 The recipient will not use the Classified Information or Materiel for other than the purposes provided for in this MOU.

12.3.3 The recipient will comply with any distribution and access restrictions on Information that is provided under this MOU.

12.4 Each Participant will maintain the security classification assigned to Classified Information or Materiel by the originating Participant and will afford to such Classified

Information or Materiel the same degree of security protection provided by the originating Participant.

12.5 The Participants will investigate all cases in which it is known or where there are grounds for suspecting that Classified Information or Materiel or classified Project Equipment provided or generated pursuant to this MOU has been lost or disclosed to unauthorized persons. Each Participant also will promptly and fully inform the other Participant of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

12.6 When any NATIB Activity contains provisions for the exchange of Classified Information or Materiel, both POs (for PAs) or the Secretariat (WGs and Information Exchange) will jointly prepare a Project Security Instruction and a Classification Guide for the NATIB Activity. The Project Security Instruction and the Classification Guide will describe the methods by which Project Information and Project Equipment will be classified, marked, used, transmitted, and safeguarded. The Instruction and Guide will be developed by the POs (for PAs) or the Secretariat (for WGs and Information Exchange) within three months after a NATIB Activity enters into effect. They will be reviewed and forwarded to the appropriate DSAs, and will be applicable to all government and Contractor personnel participating in the NATIB Activity. The Classification Guide will be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The Project Security Instruction and Classification Guide will be approved by the appropriate DSA prior to the transfer of any classified or Controlled Unclassified Information.

12.7 Contractors, prospective Contractors, or subcontractors which are determined by DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party may participate in a Contract or subcontract requiring access to Classified Information or Materiel provided or generated pursuant to this MOU only when enforceable measures are in effect to ensure that nationals or other entities of a Third Party will not have access to Classified Information or Materiel. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Participant will be consulted for approval prior to permitting such access.

12.8 For any facility wherein Classified Information or Materiel or classified Project Equipment is to be used, the

responsible Participant or Contractor will approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the Classified Information or Materiel or classified Project Equipment pertaining to each NATIB Activity. These officials will be responsible for limiting access to Classified Information or Materiel or classified Project Equipment involved in the NATIB PA to those persons who have been properly approved for access and have a need-to-know.

12.9 Each Participant will ensure that access to the Classified Information or Materiel is limited to those persons who possess requisite security clearances and have a specific need for access to the information in order to participate in the NATIB Activity.

12.10 Classified Information or Materiel or classified Project Equipment provided or generated pursuant to this MOU may be classified as high as SECRET. The existence of this MOU is UNCLASSIFIED and its contents are UNCLASSIFIED. The classification of a specific NATIB PA and its contents will be stated in that PA.

SECTION XIII

THIRD PARTY SALES AND TRANSFERS

13.1 The Participants will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information or jointly acquired or produced Project Equipment provided by the other Participant to any Third Party without the prior written consent of the other Participant. Furthermore, neither Participant will permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the other Participant. Such consent will not be given unless the government of the intended recipient consents in writing with the Participants that it will:

13.1.1 not retransfer, or permit the further retransfer of, any equipment or Information provided; and

13.1.2 use, or permit the use of, the equipment or Information provided only for the purposes specified by the Participants.

13.2 A Participant will not sell, transfer title to, disclose, or transfer possession of Project Equipment or Project Background Information provided by the other Participant to any Third Party without the prior written consent of the Participant which provided such equipment or Information. The providing Participant will be solely responsible for authorizing such transfers and, as applicable, specifying the method and conditions for implementing such transfers.

13.3 Sales and other transfers of equipment developed or Project Foreground Information generated under this MOU may attract a levy to be shared between the Participants. Prior to any such sale or transfer, the amounts of any levy will be mutually determined by both Participants, consistent with the laws and regulations of each Participant. Either Participant may reduce the assessment of its share of the levy.

SECTION XIV

LIABILITY AND CLAIMS

14.1 Claims arising under this MOU will be dealt with under paragraph 1 of the Agreement between the Government of the United States of America and the Government of Canada of 19 August 1994 Concerning Certain Mutual Defense Commitments.

SECTION XV

CUSTOMS DUTIES, TAXES AND SIMILAR CHARGES

15.1 Customs duties, import and export taxes and similar charges will be administered in accordance with each Participant's respective laws and regulations. Insofar as existing national laws and regulations permit, the Participants will endeavor to ensure that such readily identifiable duties, taxes, and similar charges, as well as quantitative or other restrictions on imports and exports, are not imposed in connection with work carried out under a NATIB Activity.

15.2 Each Participant will use its best efforts to ensure that customs duties, import and export taxes, and similar charges are administered in a manner favorable to the efficient and economical conduct of the work. If any such duties, taxes, or similar charges are levied, the Participant in whose country they are levied will bear such costs. Any such costs will not be considered to fall under either Participant's shared costs.

SECTION XVI

GENERAL PROVISIONS

16.1 All activities of the Participants under this MOU will be carried out in accordance with their national laws.

16.2 Any dispute regarding the interpretation or application of this MOU will be resolved by consultation between the Participants and will not be referred to a national or international tribunal or third party for resolution or settlement.

16.3 All activities and administrative actions under the NATIBO Charter, to include previously established WGs, will continue under the provisions of this MOU.

16.4 In the event of a conflict between the terms of this MOU and any NATIB Activity, this MOU will take precedence.

SECTION XVII

AMENDMENT, TERMINATION, ENTRY INTO EFFECT AND DURATION

17.1 This NATIBO MOU may be amended only by the mutual written consent of the Participants. Any of the PAs under this NATIBO MOU may be amended only by the mutual written consent of the MOU Co-Chairs or their authorized representatives.

17.2 This NATIBO MOU and any of its PAs may be terminated at any time by the mutual written consent of the Participants. In the event both Participants wish to terminate this MOU, the Participants will consult to ensure termination on the most economical and equitable terms. In the event of termination of the MOU, all NATIB Activities will also automatically be terminated.

17.3 Either Participant may terminate this MOU upon 180 days written notification to the other Participant. Either Participant may terminate a PA upon 90 days written notification to the other Participant. Either Participant may terminate a NATIB Activity not otherwise provided for upon 45 days written notification to the other Participant. Such notice will be the subject of immediate consultation by the MOU Co-Chairs to decide upon the appropriate course of action. In the event of such termination, the following rules apply:

17.3.1 The terminating Participant will continue participation, financial or otherwise, up to the effective date of termination.

17.3.2 Each Participant will pay the costs it incurs as a result of termination.

17.3.3 All Project Information and rights therein received under the provisions of this MOU prior to the termination will be retained by the Participants subject to the provisions of this MOU.

17.4 The respective rights and responsibilities of the Participants regarding SECTION IX (Disclosure and Use of Project Information), SECTION X (Controlled Unclassified Information), SECTION XII (Security), and SECTION XIII (Third Party Sales and Transfers) will continue notwithstanding termination or expiration of this MOU and any of its PAs.

17.5 This MOU consists of the Introduction, seventeen (17)

Sections, and two Annexes and will enter into effect from the date of signature of both Participants and, unless terminated or extended, will remain in effect for 25 years. PAs will enter into effect upon signature by both Participants. All PAs will automatically terminate upon the termination or expiration of this MOU.

The foregoing represents the understandings reached between the Department of Defense of the United States of America and the Department of National Defence of Canada upon the matters referred to therein. Signed in duplicate in the English language by authorized representatives.

FOR THE DEPARTMENT OF DEFENSE OF
THE UNITED STATES OF AMERICA:


Signature

E. C. Aldridge, Jr.

Under Secretary of Defense
(Acquisition, Technology &
Logistics)

May 30, 2001

Washington, D.C.

FOR THE DEPARTMENT OF NATIONAL
DEFENCE OF CANADA:


Signature

Alan S. Williams

Assistant Deputy Minister
(Materiel)

May 30, 2001

Washington, D.C.

ANNEX A
SAMPLE NATIB PA
TO THE
US-CA
MEMORANDUM OF UNDERSTANDING
FOR NORTH AMERICAN TECHNOLOGY AND INDUSTRIAL BASE ACTIVITIES
(Short Title: NATIBO)

DATED MM/DD/YYYY

U.S./CA NATIBO PROJECT ARRANGEMENT NO. _____ *

BETWEEN

THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA
AND THE
DEPARTMENT OF NATIONAL DEFENCE
OF CANADA
CONCERNING

(FULL DESIGNATION OF THE PROJECT)

*The Project Arrangement Numbers will be structured as follows:
NATIBO: U.S./CA XX-NNNN-nnnn where XX is a U.S. Military
Service or Defense Agency designator such as N for Navy, A for
Army, AF for Air Force, AR for DARPA, etc.; NNNN is the calendar
year, and nnnn is a sequential number.

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NB: Guidance appears throughout in parentheses and bold italics. This is to assist in drafting PAs. Do NOT Insert this guidance text into your PA.

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SECTION I

INTRODUCTION

This Project Arrangement (PA) hereby establishes the _____ as a Project in accordance with the Memorandum of Understanding between the Department of Defense of the United States of America and the Department of National Defence of Canada for North American Technology and Industrial Base Activities (NATIBO), (date).

SECTION II

DEFINITION OF TERMS AND ABBREVIATIONS

(Define only those terms used in this PA that have not been defined in the NATIBO MOU.)

SECTION III

OBJECTIVES

The objectives of this _____ Project are:

- a. the development of _____
- b. the improvement of _____
- c. the investigation of _____

SECTION IV

SCOPE OF WORK

The following tasks will be undertaken under this PA.

- a. Research_____
- b. Develop_____
- c. Evaluate_____
- d. Design, fabricate and test_____

SECTION V

SHARING OF TASKS

The sharing of tasks will be as follows:

- a. The DoD will_____
- b. The DND will_____
- c. DoD and DND will jointly_____

SECTION VI

BREAKDOWN AND SCHEDULE OF TASKS

(OPTIONAL)

(When the tasks covered under a PA may be performed using multiple phases, requiring milestones or decision points.)

The Project will proceed according to the following phases and schedule

<u>Phase 1</u>	<u>Start</u>	<u>End</u>
Description of Phase 1	MM/YYYY	MM/YYYY

(Milestone 1) *(e.g. Transmittal of Feasibility Report)*

<u>Phase 2</u>	<u>Start</u>	<u>End</u>
Description of Phase 2	MM/YYYY	MM/YYYY

(Milestone 2) *(e.g. Decision to proceed to Phase 3)*

<u>Phase 3</u>	<u>Start</u>	<u>End</u>
Description of Phase 3	MM/YYYY	MM/YYYY

(Milestone 3) *(e.g. Evaluation, analysis of results)*

(Add as many phases as necessary.)

SECTION VII

MANAGEMENT

1. Project Officers:

U.S. PO

Title/Position _____

Organization _____

Address _____

Canadian PO

Title/Position _____

Organization _____

Address _____

2. Particular Management Procedures:

(Mention only those additional management responsibilities not covered under SECTION IV of the NATIBO MOU.)

a. POs will prepare and present reports and reviews as directed by the MOU Co-Chairs;

b. Additionally, the POs will provide progress reviews and reports to the relevant WG, as required.

SECTION VIII
FINANCIAL ARRANGEMENTS

1. The DoD share of the tasks is estimated to be X U.S. dollars. The DND share of the tasks is estimated to be Y CA dollars.

2. The U.S. dollar will be the reference currency for the work done in the U.S. pursuant to a PA. The CA dollar will be the reference currency for the work done in Canada pursuant to a PA.

(a. Under this PA, where one Participant contracts on behalf of both Participants, the POs will be responsible for establishing the detailed financial management procedures under which a PA will operate, if they deem appropriate. These procedures, which must accord with the national accounting and audit requirements of the Participants, will be detailed in an FPPD proposed by the POs and subject to the approval of the MOU Co-Chairs, as appropriate.

b. Further, if the Participants incur contractual or other obligations on each other's behalf, please note that para 6.6 of the MOU applies: The Participants recognize that it may become necessary for one Participant to incur contractual or other obligations for the benefit of the other Participant prior to receipt of the other Participant's funds. In the event that one Participant incurs such obligations, the other Participant will make such funds available in such amounts and at such times as may be required by the Contract or other obligation and to pay any damages and costs that may accrue from the performance of or cancellation of the Contract or other obligation in advance of the time such payments, damages, or costs are due.

c. Should the Participants elect to use either U.S. or CA

currency, a set exchange note will be included in this section of the PA.

d. Where one Participant contracts on behalf of both, the following funding procedures may be adopted as deemed necessary by the POs named above:

1. The POs will prepare and circulate a PA budget and annual payment schedule for approval by the MOU Co-Chairs.
2. The POs will review the PA budget and annual payment schedule every X months and provide estimates to the MOU Co-Chairs.
3. The POs will make their financial contributions in the currency of their choice. The PO will administer these funds using the appropriate financial management procedures of the Participant doing the work or contracting for the work to be done. Should any interest accrue in a Participant's contribution, it will be returned as directed by that Participant.
4. Each PO will maintain separate accounting records for each Participant's contribution. The accounting of the funds will be in the currency of the Participant's Nation where the work is being done, or where the Contract is made. Funds will be made available upon the request of a Participant, and will routinely be forwarded to each Participant within X weeks after the end of each quarter.
5. All funds will be disbursed against certification by the PO that the work has been properly performed or the goods or services have been received and accepted.
6. The PO will maintain full records of all work performed, goods received, responsibilities and commitments incurred, funds received and all disbursements certified and made.
7. At the conclusion of the work under a PA, all financial responsibilities will be settled and a financial balance will be obtained by the PO and a statement thereof will be submitted to both Participants as soon as possible. Any balance remaining will be refunded to the Participants in accordance with their financial share in this PA.

e. Cooperative efforts of the Participants over and above the

jointly agreed tasks set forth in the SCOPE OF WORK, SHARING OF TASKS and FINANCIAL ARRANGEMENTS sections will be subject to amendment to this PA or signature of a new PA.)

SECTION IX

CONTRACTUAL ARRANGEMENTS

(If the Participants determine that Contracting is necessary to fulfill their obligations under a PA of this NATIBO MOU, one Participant may contract for both Participants in accordance with its respective national laws, regulations and procedures.)

SECTION X

COOPERATIVE PROJECT PERSONNEL (CPP) (OPTIONAL)

(Upon recommendation of POs and with approval of MOU Co-Chairs: If known at establishment of PA, list CPP who are mutually determined by MOU Co-Chairs as required to work under the PA. POs must ensure that all provisions of SECTION V, CPP, of the MOU are met and that required documentation is completed:

- 1) "Certificate of Conditions and Responsibilities for Cooperative Project Personnel (CPP)" (Annex B to the MOU); and
- 2) Position Description (PD), as required by the aforementioned Certificate.)

SECTION XI

LEVEL OF CLASSIFICATION

(Only one of the three following possibilities must be selected:)

- a. No Classified Information or Materiel will be exchanged under this PA; or
- b. The highest level of Classified Information or Materiel exchanged under this PA is: Confidential; or
- c. The highest level of Classified Information or Materiel

exchanged under this PA is: Secret.

SECTION XII

PRINCIPAL ORGANIZATIONS INVOLVED

(List government laboratories, research centers, and other organizations for both the U.S. and Canada.)

SECTION XIII

LOAN OF MATERIALS, SUPPLIES, AND EQUIPMENT (OPTIONAL)

1. The following Project Equipment will be transferred by the providing Participant to the receiving Participant:

Providing Participant	Receiving Participant	QTY	Description	Part/Stock #	Consumables/Non-consumables	Approx Value	Value of Expected Wear and Tear

(Fill in as appropriate)

2. The providing Participant will transfer the Project Equipment listed above for the duration of _____ unless extended by mutual consent.

3. The providing Participant will deliver the Project Equipment **(Specify arrangements)**. Custody of the Project Equipment will pass from the providing Participant to the receiving Participant at the time of receipt. Any further transportation is the responsibility of the receiving Participant unless otherwise specified.

4. The providing Participant will furnish the receiving Participant such information as is necessary to enable the Project Equipment to be used.

5. The receiving Participant will inspect and inventory the Project Equipment upon receipt. The receiving Participant will also inspect and inventory the Project Equipment prior to its return to the providing Participant unless the Project Equipment is consumed in accordance with paragraph 1.

6. Upon expiration or termination of the transfer period specified in paragraph 2 (**taking into account any approved extension by the providing Participant**), the receiving Participant will return the nonconsumable Project Equipment to the providing Participant (**Specify arrangements**). If the Project Equipment is lost, unintentionally destroyed, or damaged beyond repair while in the custody of the receiving Participant, the receiving Participant will issue a certificate of loss/destruction/irreparable damage to the providing Participant. If the materials, supplies and equipment are lost or damaged beyond economical repair, the receiving Participant will pay the replacement value as computed pursuant to the providing Participant's national laws, regulations and procedures.

7. In no event will such costs exceed the approximate value of the Project Equipment set out herein; less an amount determined to represent reasonable wear and tear.

8. It is intended that the receiving Participant will consume the consumable Project Equipment specified in paragraph 1. If this does occur, the receiving Participant will provide written notice of its consumption to the providing Participant. In the event consumption does not occur prior to the end of the transfer period specified in paragraph 2, the receiving Participant will return the Project Equipment to the providing Participant (**Specify arrangements**). If the Project Equipment is lost, unintentionally destroyed, or damaged beyond repair prior to its intended consumption while in the custody of the receiving Participant, the receiving Participant will issue a certificate of loss/destruction/irreparable damage to the providing Participant.

SECTION XIV

ENTRY INTO EFFECT, DURATION AND TERMINATION

This _____ PA,
a Project under the Memorandum of Understanding between the
Department of Defense of the United States of America and the
Department of National Defence of Canada for North American
Technology and Industrial Base (NATIBO) Activities , will enter
into effect upon its signature, and will remain in effect for
_____ years unless terminated by either Participant. It may be
extended by mutual written consent of the signatories.

Signature

Signature

Name

Name

Title

Title

Date

Date

Location

Location

ANNEX B

SAMPLE NATIB PA PERSONNEL ASSIGNMENT AGREEMENT
TO THE
US/CA MEMORANDUM OF UNDERSTANDING
FOR NORTH AMERICAN TECHNOLOGY AND INDUSTRIAL BASE ACTIVITIES
(Short title: NATIBO)

DATED MM/DD/YYYY

CERTIFICATE OF CONDITIONS AND RESPONSIBILITIES
FOR COOPERATIVE PROJECT PERSONNEL

I understand and acknowledge that I have been accepted for assignment to (Name and location of organization to which assigned) pursuant to the Memorandum of Understanding between the Department of Defense of the United States of America and the Department of National Defence of Canada for North American Technology and Industrial Base Activities (NATIBO), signed mm/dd/yyyy. In connection with this assignment, I further understand, acknowledge, and certify that I will comply with the following conditions and responsibilities:

1. The purpose of the assignment is to provide my expertise to the [STATE SPECIFIC NATIB Project Arrangement (PA)]. There will be no access to information except as required to perform the duties described in the Position Description (PD) of the position to which I am assigned, as determined by my designated supervisor.
2. I will perform only functions which are properly assigned to me as described in the PD for my assignment and will not act in any other capacity on behalf of my government or my Parent Participant or Parent Organization.
3. All information to which I may have access during this assignment will be treated as information provided to my government in confidence and will not be further released or disclosed by me to any other person, firm, organization or government without the prior written authorization of the NATIB PA PO.
4. When dealing with individuals outside of my immediate office of assignment on official matters, I will inform such individuals that I am a foreign Cooperative Project person.
5. I have been briefed on, understand, and will comply with all applicable security regulations of the NATIBO MOU.

6. I will immediately report to my designated supervisor all attempts by unauthorized personnel to obtain, without proper authorization, Classified, restricted, proprietary or Controlled Unclassified Information to which I may have access as a result of this assignment.

(Typed Name)

(Signature)

(Rank/Title)

(Rank/Title)

(Date)

(Date)